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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/874,992 06/12/97 STAMLER

J DUK97-02M

HM12/0226  
HAMILTON BROOK SMITH AND REYNOLDS  
TWO MILITIA DRIVE  
LEXINGTON MA 02173-4799

EXAMINER

CELSA, B

ART UNIT

PAPER NUMBER

1627

DATE MAILED:

02/26/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

file  
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## Office Action Summary

Application No.

08/874,992

Applicant(s)

Stamler et al.

Examiner

Bennett Celsa

Group Art Unit

1627



☒ Responsive to communication(s) filed on Dec 18, 2000.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

☒ Claim(s) 15-17 and 59-71 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 17, 59, 62, 63, 65, and 68-71 is/are allowed.

☒ Claim(s) 15, 16, 60, 61, 64, 66, and 67 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☒ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### **DETAILED ACTION**

1. The request filed on 12/18/00 for a Continued Examination (RCE)Continued Prosecution Application (CPA) under 35 USC Section 132(b) based on parent Application No.08/874,992 is acceptable. An action on the RCE follows.
2. Applicant's amendment dated 12/13/00 in paper no. 21 and applicant's Facsimile Supplemental Amendment and Interview Summary dated 2/20/01 in paper no. 22 is hereby acknowledged.

### ***Status of the Claims***

Claims 15-17 and 59-71 are currently pending and under consideration.

### **Withdrawn Objection(s) and/or Rejection(s)**

3. The obviousness rejections of:
  - a. Claims 15-17 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over . Stamler et al, WO 93/09806 (5/93);
  - b. Claims 15-16 are rejected under 35 U.S.C. 103(a) as obvious over Stamler et al, WO 93/09806 (5/93) and Kaesenmeyer, U.S.Pat. No. 5,543,430 (8/96: filed 10/94);.
  - c. Claims 15-17 and 53-59 are rejected under 35 U.S.C. 103(a) as obvious over Stamler et al, WO 93/09806 (5/93) alone and if necessary further in view of the specification admission as to prior art on pages 37-39, Kaesenmeyer, U.S.Pat. No. 5,543,430 (8/96: filed 10/94), Moore et al., J.Biol. Chem. Vol. 251, No. 9, (5/76) pages 2788-2794, Sharma et al., J. Biol. Chem. Vol. 253, No. 18 (9/78) pages 6467-72 and Wade et al. Chem. Res Tox. 1990 Vol. 3, pages 289-291.

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are hereby withdrawn in view of applicant arguments and accompanying Declaration evidence already of record and as elaborated in Applicant's amendment dated 12/13/00 in paper no. 21 and applicant's Facsimile Supplemental Amendment and Interview Summary dated 2/20/01 in paper no. 22.

*New Objection(s) and/or Rejection (s)*

*Double Patenting*

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 15, 16, 60, 61, 64, 66 and , 67 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 77 of copending Application No. 08/796,164. Although the conflicting claims are not identical, they are not patentably distinct from each other because the use of a nitrosated hemoglobin (e.g. nitrosylhemoglobin) for treating a disorder resulting from platelet activation or adherence (e.g. stroke, angina etc.) taught by the '164 application claims are within the scope of the presently claimed invention and would thus render the present claims obvious..

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 15, 16, 60, 61, 64, 66 and , 67 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21 and 26-28 of copending Application No. 08/616,371. Although the conflicting claims are not identical, they are not patentably distinct from each other because the use of a nitrosated hemoglobin (e.g. SNO hemoglobin) for treating a disorder resulting from platelet activation or adherence (e.g. stroke, angina etc.) taught by the '371 application claims are within the scope of the presently claimed invention and would thus render the present claims obvious..

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### **General information regarding further correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Celsa whose telephone number is (703) 305-7556.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jyothsna Venkat (art unit 1627), can be reached at (703)308-0570.

Any inquiry of a general nature, or relating to the status of this application, should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Bennett Celsa (art unit 1627)

February 21, 2001

**BENNETT CELSA  
PRIMARY EXAMINER**

